APPEAL NO. 010263

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on October 13, 2000, and January 5, 2001, the hearing officer resolved the disputed issues by determining that the appellant (claimant) sustained a compensable injury on _____, and that she had disability from July 4, 2000, through November 6, 2000. The claimant appeals the determination that her period of disability ended on November 6, 2000, and contends that her evidence established that she had disability to the date of the hearing. The respondent (carrier) urges in response that the evidence is sufficient to support the date determined by the hearing officer.

DECISION

Affirmed.

The claimant testified that she underwent a work hardening program for six to nine weeks, ending on or about November 6, 2000, and that she still has back pain. The claimant's treating doctor, Dr. G, a chiropractor, wrote on September 29, 2000, that the claimant has achieved further reduction of pain and improvement of function; that she has undergone a functional capacity evaluation and appears ready for rehabilitation; that she is to continue with conservative management and will begin a work hardening program; and that she is to "continue off work until the end of program or she is able to return to work whichever comes first." An unsigned Weekly Work Hardening Report dated November 10, 2000, states that the claimant has completed the sixth week of the work hardening program and has made steady improvement; that her cook/baker job is a medium-to-heavy level job; and that her current functional capacity level is at the light-to-medium level. The report further states that another two weeks of work hardening is necessary to increase the claimant's capacity to the medium level to enable her to return to work with minimal accommodation but that the carrier will not preauthorize an extension.

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The determination as to an employee's disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992. The claimant had the burden to prove, as she contends, that her disability extended beyond the completion of the work hardening program and up to the date of the hearing. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate-reviewing tribunal, the Appeals Panel will not disturb a challenged factual determination of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly

wrong or manifestly unjust and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge